



August 20, 2021

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Director Dorka:

Thank you to you and your team for taking the time to meet with us virtually on Thursday August 5, 2021 (August 5 meeting). It was both instructive and enlightening.

The Department recognizes and fully embraces its mandate to serve the citizens of Missouri in a manner that does not discriminate, and is in compliance with Title VI of the Civil Rights Act of 1964, and other applicable civil rights laws. In addition to fulfilling its legal requirements, the Department remains actively and sincerely receptive to all pragmatic ideas on how to fulfill the intent of Title VI. We welcome specific suggestions from any of our federal partners regarding changes that would result in delivery of services more equitably and effectively to disadvantaged communities and populations.

Based upon our conversation, the Missouri Department of Natural Resources (Department) came away with the following understandings from the August 5 meeting:

1. As a recipient of federal funding (Recipient) from the U.S. Environmental Protection Agency (EPA), the Department is wholly committed to voluntary compliance with applicable U.S. Civil Rights Laws and related authorities. Yet, EPA's External Civil Rights Compliance Office (ECRCO) appears unwilling or unable to cite specific legal compliance criteria applicable to Recipients that is independent of ECRCO interpretation.
 - a. On June 25, 2021, the Department requested from ECRCO legal counsel via email a draft proposed Informal Resolution Agreement specific to this matter.
 - b. On July 22, 2021, via email, ECRCO rejected that request, instead stating it "is ECRCO's practice to first meet and discuss the issues with recipients" leading to the August 5 meeting.



- c. In that same correspondence, ECRCO directed the Department to review the “general recommendations for voluntary resolution,” specifically the recommendations for Voluntary Compliance (also identified as voluntary compliance agreement or “VCA”) found in ECRCO’s March 30 Partial Preliminary Findings (Partial Preliminary Findings).

During the August 5 meeting, the Department asked several times for specific criteria and citations to legal authorities to which the Department could refer to understand any discrepancies between the Department’s compliance efforts, ECRCO’s allegations of noncompliance, and the specific remedies the Department should pursue.

- d. ECRCO responded in two ways: First with some specific instances of what it considers noncompliance, but without reference to specific law; and, second, with references to specific legal authorities that do not provide specific compliance criteria.
 - e. The Department asked for additional direction concerning EPA’s 2004 guidance regarding Limited English Proficiency (LEP) individuals, specifically about materials to be pre-emptively translated. ECRCO stated that identifying said documents was the Department’s responsibility. ECRCO indicated that after the Department selected and translated materials, ECRCO would then determine compliance with the LEP guidance.
 - f. Continuing to seek guidance, the Department asked for other specific examples of ECRCO’s suggested areas for translation, specifically after Director Dorka’s indication that there was no appreciable change on the Department website. ECRCO again emphasized it was the Department’s responsibility to determine what to translate. Director Dorka then suggested the environmental complaint form needed translation, and further suggested more information on the Department’s website main page needed translation.
2. ECRCO describes the VCA language as “general recommendations.” Some of the VCA recommendations include undefined terms (neither found in law nor guidance). Further, during the August 5 meeting, some of ECRCO’s own statements identified that while a Recipient may believe it is meeting VCA recommendations, ECRCO may nevertheless determine insufficient compliance with federal law. The VCA recommendations’ lack of clarity and certainty compels the Department to continue to ask for additional guidance from ECRCO.¹

¹ The Department has implemented, is implementing, and is in the process of implementing recommendations of the VCA terms. See Appendix A, below. The Department has been complying with all federal legal requirements, and has continuously demonstrated such compliance. Nevertheless, the Department is adopting those VCA

3. ECRCO pushes Recipients to agree to an Informal Resolution Agreement (IRA) or the VCA process rather than conduct an investigation.
 - a. ECRCO repeatedly emphasized the amount of work an investigation entailed, necessitating a choice by the Department between either the informal resolution route or the formal investigation route.
 - b. Despite the Department's June 25 written request for a complaint-specific IRA, during the August 5 meeting, Director Dorka emphasized that a verbal commitment from the Department to follow the VCA or IRA process was the first step, due to the volume of work associated with conducting an investigation. The purpose of this correspondence was to identify which route the Department plans to choose.
4. Unprompted, ECRCO emphasized this process was not singling out Missouri, nor political in motivation, and suggested that a recent ECRCO resolution against a Recipient located in San Francisco demonstrated such neutrality. The Department previously and continues to expect that EPA will operate in a politically neutral manner, within the bounds of its statutory and regulatory jurisdiction.

The correspondence leading up to, and the events of the August 5 meeting, demonstrate to the Department that ECRCO has knowledge of additional criteria (whether explicitly cited in law or not) that it may use when evaluating the Department's compliance. But, when explicitly asked for that information, ECRCO appears unable to proactively share that additional criteria and assist the Department with compliance. As a Recipient and state agency charged with protecting human health and the environment, the Department wants to ensure both legal compliance and effective, nondiscriminatory service provision to the citizens of Missouri. As stated in previous Department correspondence, this is not about just following the law, it is simply the right thing to do.

The Department believes we are fully complying with the law, and that we have demonstrated that compliance. We have adopted additional practical recommendations by ECRCO, and we remain interested in further suggestions. Yet, ECRCO continues to suggest our non-compliance. As a Recipient, it is unclear how we are supposed to demonstrate compliance with federal law when the evaluation rubric ECRCO appears to be applying is at best vague and ambiguous (perhaps even to ECRCO), or at worst, ECRCO's subjective opinion.

We continue to welcome specific suggestions that are within our legal authority to deliver our services more equitably and effectively to disadvantaged communities and populations.

recommendations that are practical, cost-effective, and further the joint mission of ECRCO and the Department in ensuring public services are provided in nondiscriminatory fashion.

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We are continuing to review the pending Request for Information #2 and prepare answers.
Thank you.

Sincerely,

A handwritten signature in blue ink, reading "J Westen". The signature is written in a cursive style with a large, stylized "J" and "W".

Jacob Westen
General Counsel

JTW:ts

Enclosure

Appendix A: The Department's Nondiscrimination Procedural Safeguard Efforts

A. Notice of Non-Discrimination under the Federal Non-Discrimination Laws

The Department has a Non-Discrimination Notice (Notice) on our website homepage (<https://dnr.mo.gov/> - ADA and Non-Discrimination; <https://dnr.mo.gov/ada-non-discrimination>), that meets the applicable requirements under 40 C.F.R. § 5.140 and § 7.95. The Notice is accessible to: (a) individuals with limited-English proficiency (LEP) in most spoken non-English language(s) in Missouri, and (b) to individuals with disabilities.

The Notice identifies the Department does not discriminate, intimidate, or retaliate against any protected class or socioeconomic status in seeking services or in exercising their rights, and identifies the state and federal laws with which the Department complies.

The Notice informs the public that any person who believes they have been subjected to unequal treatment or discrimination or retaliation by a Department employee, or based on a Department policy or practice, should report the incident(s) to the Department Nondiscrimination Coordinator. The Notice emphasizes the Department is committed to completing prompt and fair investigations of complaints received, and evaluates each complaint based on the preponderance of the evidence.

The Notice identifies the Nondiscrimination Coordinator by name and position title, and provides contact information, including email, phone number, mailing address, and physical address.

B. Grievance Procedures to Process Discrimination Complaints filed under Federal Non-Discrimination Laws

The Department has Grievance Procedures (Grievance Procedures) to promptly and fairly process and resolve discrimination complaints filed under federal non-discrimination statutes and the EPA's implementing regulations at 40 C.F.R. Parts 5 and 7. The Grievance Procedures identify the Department prohibits harassment, intimidation, and retaliation against any person availing themselves of the procedures. These can be found on the Department's website (<https://dnr.mo.gov/document-search/modnr-policy-111-external-complaint-response-policy>, and <https://dnr.mo.gov/document-search/external-complaint-discrimination-form-mo-780-2926>).

The Grievance Procedures clearly identify the Nondiscrimination Coordinator, including name and contact information. The Grievance Procedures also clearly state anyone who feels aggrieved can submit a complaint. The procedures explain the coordination and oversight of the process, describe the complaint process, including how to submit the complaint, the steps, the review, and potential outcomes, including when outcomes may be provided in writing, and additional federal and state options for review.

C. Designation of Non-Discrimination Coordinator

The Department has a designated Nondiscrimination Coordinator, assisted by the Department's Employee Relations Office (ERO) and other relevant Department team members.

Any member of the public or internal Department team member can contact the Nondiscrimination Coordinator to learn information about the Department's practices, obtain services, or submit a complaint. The Nondiscrimination coordinator function and responsibilities are consistent with the regulatory requirements of 40 C.F.R. §5.135, §7.85(g), and §7.95(a).

D. The Department Ensures Meaningful Access to Programs and Activities for People with Limited English Proficiency (LEP)

The Department has analyzed the State of Missouri population based upon the EPA's LEP Guidance found at 69 F.R. 35602 (June 25, 2004), to identify the appropriate language groups and determine what language services or mix of language services the Department may provide to ensure that limited-English proficient individuals can meaningfully participate in the Department's services, programs, and activities.

The Department is in the process of identifying and translating specific, additional vital documents for LEP access purposes, including the External Complaint Response Policy and related External Complaint form, as well as the ADA Notice and ADA Grievance Policy.

E. The Department Ensures Meaningful Access to Programs and Activities for People with Disabilities

The Department has an ADA Notice (<https://dnr.mo.gov/document-search/notice-under-americans-disabilities-act>) and ADA Grievance Policy (<https://dnr.mo.gov/document-search/grievance-procedures-under-americans-disabilities-act>), and works diligently to ensure access to Department services for people with disabilities. The Department takes consistent steps to ensure all public meetings, either in-person or virtual, offer accommodations to individuals seeking to participate.

F. Training (ECRCO did not identify any deficiencies with the Department training process.)

The Department conducts training on its employee policies for all new hires and conducts retraining every two years for all Department employees.